

DestiNation India

PM's focus on governance, taxation and transparency will help us enter the business-friendly club



Anil D Ambani

If Prime Minister Narendra Modi has one ambition, it is to improve India's dismal ranking in the ease of doing business index — currently languishing at 142, just above the West Bank and Gaza — as part of a comprehensive strategy to attract investors, rejuvenate the economy, create a global manufacturing hub and generate millions of jobs for young Indians.

In the immediate analysis, he would want to see India rapidly climb up the ranks, to count at least among the top 50. I am ever confident that this will happen sooner than anyone imagines. For, I know that if there's any one teaching of the Mahatma the PM has closest to his heart, it is that about being the (force of) change that one would like to see.

His government has already announced a series of far-reaching reforms, with more lined up in the forthcoming Budget and beyond. My interactions with investors, regulators, law enforcement agencies and other government bodies tell me that there are a number of further areas that require immediate attention. Critical to improving the ranking will be putting in place a host of legislative changes while making sure that those in charge of enforcement clearly understand that the thrust is to empower and encourage, not just to police and punish.

The PM is keen that India establishes global benchmarks in areas such as governance, taxation and transparency. For this to happen, investors need to be reassured that India's legislative regime is predictable, stable, transparent, time-bound and in line with global best practices. These principles should also apply broadly to litigation policy, bankruptcy law and arbitration.

Wrongs Hurt the Right

It is common knowledge that tax authorities are used to challenging every order passed against them. This needs to be change because it denies law-abiding taxpayers their rightful dues in a timely manner. For corporates, these may include tariff orders by an electricity regulator, a telecom tribunal or some other forum, with every decision now being appealed right up to the Supreme Court.

What's more, the prevailing practice of confiscation of security deposits and encashment of bank guarantees amounts to forms of extreme punitive action that lead to inevitable, but totally avoidable, litigation.

With regard to the bankruptcy law, an efficient and effective insolvency system builds confidence among credit providers, resulting in reduced borrowing costs. It also fosters confidence among international investors. The TK Viswanathan Committee has made recommendations in

this regard that need to be implemented at the earliest. Also needed is a credible, sustainable basis for settling employee claims and separation of workmen to allow clean closures of unviable businesses.

In such cases, the administrator needs to be given the power to waive or reduce penalties and interest payments. An agency should supervise bankruptcies as the National Company Law Tribunal's operation has been stayed by the Supreme Court.

Let me also suggest that the arbitration law should ensure that the process follows a strict 'terms of reference' approach to set out all issues clearly. Time limits are needed for each stage, ensuring that the exercise is completed in six months. The government and state-run units should be precluded from appointing ex officio or retired bureaucrats as arbitrators. And judicial interventi-

le-window registration and mutation processes, and a streamlined system for land-use conversion. Similarly, labour law reforms should speed up the process of shutting units with adequate compensation to workers. Self-certification of various labour laws should be implemented to end 'inspector raj'.

We should also aim for convergence and e-enablement of all licensing and registration processes to provide for a unified, comprehensive, time-bound and process-based review that leads to the grant of speedy approvals. A combined digital application form instead of different paper-based ones for various departments will simplify the process.

In the area of environmental clearances, let me suggest that these should be made through a single window and be time-bound. Environment compliance assistance centres should

emerging issues task force should consider issues raised by business chambers and provide clarifications in 60-90 days. The government needs to set up infrastructure to ensure that advance rulings are made in six months. The domestic threshold for this should be lowered to ₹25 crore from ₹100 crore.

Make Taxes Certain

On transfer pricing, a distinction needs to be made between the role of Indian multinationals as shareholders of foreign subsidiaries and as lenders and guarantors. A specific combined mechanism is needed to deal with transfer pricing and advance pricing arrangements (APAs) for customs and income tax, doing away with the special valuation branch for customs valuation. This will assume greater significance as 'Make in India' gathers pace.

There is a strong view that the general anti-avoidance rule (Gaar) should not be introduced. Instead, a specific anti-avoidance rule (Saar) should be put in place after consultations. A change is also needed in the approach of the Central Board of Direct Taxes and the Central Board of Excise and Customs, with regard to the accountability of officers, complaints of harassment and excessive assessments. Revenue targets should not be overly aggressive and apparently harsh orders should be avoided.

In line with international norms, group companies should be allowed to file consolidated returns to set off losses of each other. This will avoid the current anomaly of one group unit paying huge taxes while another carries forward huge losses.

Building social and physical infrastructure and skill development should be incentivised. Standardisation of public-private partnership (PPP) contracts will go a long way toward transparency and consistency. With regard to vicarious liability, prosecution against directors and senior managers should be launched only after sanction by a senior-level official giving reasons and justifying the action.

The three Ds — democracy, demographics and demand — have been in India's favour. A very welcome fourth D — decisiveness — has now been introduced in abundance by Prime Minister Modi and his able team of ministers, including finance minister Arun Jaitley and commerce and industry minister Nirmala Sitharaman. This offers great hope that India will soon shake off its image of being a risky and difficult place for businesses, and instead become a safe, predictable and profitable destination for investors.

I have not the slightest doubt that this will happen very, very soon. For, if there's one life principle that PM Narendrabhai is inspired by, it is Swami Vivekananda's message about Arjuna-like single-mindedness in the pursuit of one's goals, "Take up one idea. Make that one idea your life. Dream of it, think of it, and live on it... this is the way to success."

For Prime Minister Narendra Modi, changing the way India does business is one such idea.

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REAL REFORMS

ld be set up in the states to facilitate information exchange between regulators and industry.

Tax reforms is another important area where arbitrary powers of seizure, search, arrest and inspection need to be curtailed. Assessment reopening needs to be curbed as this leads to huge liabilities and penalties being imposed. Assessments should be transparent and not be reopened in the wake of retrospective amendments. Tax refunds should be automatic and faster. There needs to be uniform interpretation of tax laws.

We all understand that at times, amendments are necessary, but these should involve a consultation paper with a reasonable time for suggestions from all stakeholders. An

on subsequent to awards being passed should be minimal.

A well-defined and structured exit policy for businesses is essential, thus hastening the winding-up process. We have to find a way out to minimise judicial delays and ensure time-bound closure to commercial disputes. The Contract and the Specific Relief Acts need to be reviewed to sanctify such accords and to ensure speedy compliance. Stay orders on projects should be granted only in extreme cases.

India should also sign treaties with more countries with which it does business regularly, so that the enforcement of foreign judgments can be streamlined.

The government has been talking about improving infrastructure. In order to achieve that, steps should be taken to ensure clarity of title through digitisation of land records, sing-